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Monday, January 4<sup>th</sup> 2010

Ms. Kristen Walli, Board Secretary  
Ontario Energy Board  
P.O. Box#2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON  
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Sent by: Fax:416-440-7656  
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**EB-2009-0187**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an Application by Enbridge  
Gas Distribution Inc. for an Order pursuant to section 90(1)  
of the *Ontario Energy Board Act*, 1998, granting leave  
to construct natural gas pipeline in the Region of York.

**Submission of Evidence by Harten Consulting**

**IN THE MATTER OF** the Ontario Energy Board Act, 1998,  
S. O. 1998, c. 15, (Schedule B)

**AND IN THE MATTER OF** an Application by Enbridge  
Gas Distribution Inc. for an Order pursuant to Section 90(1)  
of the Ontario Energy Board Act, 1998, granting leave  
to construct natural gas pipeline in the Region of York.

**SUBMISSION OF EVIDENCE BY HARTEN CONSULTING**

Enbridge has stated that it requires a number of approvals listed under "Authority." In response to Harten Consulting Interrogatory #13 Enbridge has responded, "To date Enbridge Gas Distribution Inc. has not made any applications for required permits."

The proposed gas pipeline would be Enbridge's first (and only) high pressure gas pipeline supplying a peaker plant in Ontario. The pipeline is located in the most environmentally sensitive area of Ontario and subject to multiple environmental regulations, including those governing the Oak Ridges Moraine. Further, the pipeline is being installed in the Township of King, which has passed motions opposing a gas fired generator being located in its municipal area.

The procedures and mindset of even a decade ago have been drastically altered by public awareness and demand for transparency tempered with concern for environmental issues.

**THE TOWNSHIP OF KING**

Enbridge has stated that it requires from the Township of King municipal approvals for constructing project facilities and zoning variance.

The Council of the Township of King has passed motions on two occasions opposing the location of a gas generator within its municipality. The initial motion advising the Ontario Power Authority that the Township of King was opposed to a gas fired electricity generator being located in King Township was passed in 2005. The matter of the generator was again brought before King Council in 2008. At a meeting of the Council of the Township of King held on April 28, 2008 a motion opposing a gas fired generator was proposed; it is attached as Harten Exhibit A. The motion was defeated on a 4 to 3 vote at the urging of Mayor Margaret Black, who opposed the motion, stating

Council must be guided by the input of the Town's legal counsel, Ms. Josie Matera, who was present and argued against the motion.

It subsequently was disclosed that Ms. Matera, is a partner in the law firm of Aird and Berlis, who were also legal counsel to the Ontario Power Authority, a strong proponent of a gas generator in the Township of King.

A subsequent motion opposing the generator was reintroduced at the Township of King Council meeting of July 2, 2008 and passed. A copy of this motion is included as Harten Exhibit B.

Ms. Matera's actions resulted in a complaint being filed with the Law Society of Upper Canada who investigated the matter. Their conclusion attached as Harten Exhibit C, states, "The Law Society concluded there is evidence suggesting that the lawyer breached the Law Society's rules of professional conduct."

The Enbridge application for leave to construct a pipeline may be improper because Enbridge requires approval from King Township who continue to retain Aird and Berlis as their legal counsel, and we believe utilize the services of Ms. Josie Matera.

Aird and Berlis are also legal counsel for Enbridge, representing them in the application by Enbridge EB-2009-0187 in front of the Ontario Energy Board. In addition, Aird and Berlis are legal counsel to the OPA which would seem to further compound the issue.

While it may be argued that the OPA, Enbridge, and the Township of King, are separate and independent entities, there is a common legal representational thread involving the parties, particularly since the issue of regulatory approvals from the Township of King is paramount.

These perceptions may cause the entire process to be viewed as tainted and the Enbridge application may be the resultant victim.

At public meetings, resident groups in the Township of King have expressed opposition to the proposed gas pipeline which is located entirely within their municipality. They have expressed strong opinions that the environmental protection afforded by the ORMCA and the *Environmental Assessment Act* are not being implemented in a manner that reflects the spirit and intent of this and other legislation.

It is probable that under the circumstances the issuance by the Township of King of any permits, zoning changes, modification to the official plan, or the minor variance referred to by Enbridge, may be the subject of public hearings in front of Town Council. The Enbridge estimate of up to six months to obtain any needed approvals from King Township, (As stated in response to OEB Interrogatory #5) may not be realistic. Enbridge should therefore provide an alternative timetable in light of these circumstances.

### **LAKE SIMCOE REGION CONSERVATION AUTHORITY**

The Lake Simcoe Region Conservation Authority had sent a letter to the consultants for Enbridge in response to their Notice of Study Commencement for Environmental Assessment. They have itemized their concerns as evidenced on attached Harten Exhibit D, which covers a substantial number of issues. On being notified of the Enbridge Gas Application EB-2009-0187, the Lake Simcoe Region Conservation Authority notified Enbridge on October 22, 2009 Harten Exhibit E, that they had not received information in response to their concerns. Such information is also relevant to other interested parties and impedes the presentation by Harten Consulting on certain matters to the Board.

The issues raised by the LRSCA are very extensive and a review of the Stantec Report does not indicate that the requested information is yet available.

(Impact, mitigation and rehabilitation)

In Appendix B, of the Stantec Report on Hydrological Assessment, (6. 1. 6), the issue of potential impacts due to construction, Stantec deals with the regulation of fill as per LSRCA O.Reg. 179/06 for regulated areas. The Report (p. 93) states, "Based on review of flood plain boundaries mapped by the LSRCA construction activities may be proposed to take place within regulated flood plain areas. Although application of the HDD method will minimize the alteration of lands within regulated flood plains, flood plains are extensive in some areas and some trenching through flood plains will be necessary. Mitigation measures are presented in Section 7. 6."

The report states that various "flood-prone widths" at water crossings be established i.e. 1.85-40 metres wide, and yet most of the lowlands (Dufferin Street area and the subject property) were under water during tropical storm Hazel. The hydrostatic discussions did not deal with the pressure of flood waters that may impact a buried high pressure gas pipeline.

### **REGIONAL MUNICIPALITY OF YORK**

Enbridge has stated that it requires permits to install pipe in road allowances under Region of York jurisdiction. (EB-2009-0187 Exhibit D, Tab 1, Schedule 2.)

The areas in question include the Oak Ridges Moraine and other protected areas. The Stantec environmental screening does not adequately address the impact on, mitigation or rehabilitation of environmental issues raised in the Region of York Official Plan.



The Stantec Final Report, route selection, Section 6, states, "Many significant environmental effects have been avoided by locating the pipeline within or adjacent to previously disturbed Row's throughout the full extent of the route." While some environmental effects may have been avoided, an examination of the preferred route and accompanying photos Harten Exhibit F1 – F8, indicate that there is a strong possibility of substantial ecological change and potential damage. The Row's referred to in many cases appear to be not substantially disturbed areas but are largely pristine, vegetated and inhabited by various fauna. The ORM is a known hilly area and the low lying marsh and wetland areas associated with the Moraine historically are recognized as frequently flooded areas. Harten Exhibit F 8.

The Region of York Official Plan states as its objectives, "To identify, protect, and restore the Regional Greenbelt's System composed of natural areas and connecting links as an essential structural component of the Region. Further," That development applications within, or on lands in close proximity to the Greenbelt's System shall be accompanied by an environmental evaluation of the impact the development will have, or is expected to have on the environmental functions or linkages of the Greenbelt's System and shall provide details of any mitigative measures that will ensure that the Greenbelt's units will not be adversely affected. Where an environmental evaluation has indicated that the development would have an overall negative effect on the environmental functions attributes, or linkages for which the lands were identified the application will not be supported or approved."

These requirements would seem beyond the scope of the Stantec Report which under states their complexity: "To acquire permits to install pipe in road allowances under its jurisdiction."

Stantec states that their study was based on data from published sources and ground surveys, but does not identify the extent of first hand investigations. Evidence is deficient that the pipeline will not have a negative effect on environmental function. Such a finding of a negative impact by the Regional Municipality of York could trigger a rejection and a refusal to grant necessary permits.

## **WATER COURSES AND FISHERIES**

The Stantec study uses information from the LSRCA to classify water courses and fish species and makes reference to an endangered species.

The ORMCP defines fish habitat as, "The spawning grounds and nursery, rearing, food supply and migratory areas on which fish depend directly or indirectly in order to carry out the life processes as identified by the Department of Fisheries and Oceans."

And further, "An application for development or site alteration that is proposed on any land located within 120 metres of fish habitat, but beyond the minimum vegetative protective zone must be accompanied by a natural heritage evaluation."

The above circumstances appear to apply to the proposed pipeline, but such evaluation has either not been prepared, or has not been made available.

Stantec's Report has referenced the presence of areas of natural and scientific interest (ANSI).

The ORMCP states, "Minimum vegetative protective zones must be established next to ANSI'S on a case by case basis through the preparation of a natural heritage evaluation in accordance with Section 23, of the ORMCP. This appears not to have been done.

Under TRCA regulation 166/06 dealing with interference with wetlands and alterations to shorelines and water courses, Enbridge must apply for a permit. See attached Harten Exhibit G. Constructing a pipeline in the affected watercourse and wetland areas will also require approvals from the Department of Fisheries and Oceans. While the Stantec Report documents the existing situation the impact and rehabilitation needed in each specific instance is inadequate.

The regulation also states, "The placing or dumping or removal of any material originating on the site or its removal requires regulatory approval."

As the pipeline will be traversing at least the nine water courses as mentioned in Harten Exhibit Q, the drilling and removal activity will require site specific permits.

## **WILDLIFE AND WILDLIFE HABITAT**

Stantec has prepared a list of species commonly found in the vicinity of the study area using *The Atlas of The Mammals of Ontario* and *The Ontario Herpetofaunal Summary Atlas*. (Dobryn 1994 and Weller 2002)

Harten Exhibit G 1, and reviewed sources that indicate species at risk within a radius of 2 km of the study area Harten Exhibit H.

Stantec has concluded that wildlife corridors and linkages have already been fragmented by the existing road network, and that as a result of the marginal habitat provided by the road Row's habitats along the preferred route are not anticipated to function as a significant wildlife habitat.

We disagree with these conclusions and an inspection along the preferred route Row's indicates thriving biodiversity which could be significantly affected by the pipeline. Further, endangered species need not be in the Row area, but only adjacent to it, which Stantec has acknowledged. The ORMCA outlines the procedure for defining significant portions of the habitat of endangered, rare and threatened species.

They are listed in: (4-2 of the ORMCP) as:

- 1) Identifying whether there are occurrences of endangered rare and threatened species within or adjacent to the study area.
- 2) If an occurrence of an endangered rare or threatened species is found, contacting MNR to confirm the location of the occurrence and whether detailed mapping exists.

3) If no detailed mapping exists, contacting MNR for direction.

The Report by Stantec is deficient in addressing this integral component of the ecology of the affected area.

### **HYDROLOGICAL FACTORS**

The hydrological observations are documented in the Stantec Report but again are deficient on matters of impact and remedial matters. The reports are contradictory and confusing in some instances.

Hydrological Evaluation 6.1.2 Exhibit K states "The primary concern regarding potential effects of pipeline construction on fish and fish habitat is species viability and potential impacts to spawning-nursing activities. Mitigation measures are presented in 7.2 Exhibit L which states, "No work will be conducted in any water course, and as such, with the implementation of the appropriate mitigation measures, no effects to the aquatic environment are anticipated resulting from these crossings."

If no work is to be done in the nine water courses how are they to be traversed by a high pressure gas pipeline?

If no work is to be done what is the reference to mitigation in the quoted section of the Report?

There are no specific studies on what the impact will be on each water course, the mitigation and remedial measures, or an evaluation of long term effect.

### **THE HOLLAND MARSH**

The proposed pipeline traverses sections of The Holland Marsh, the most productive and renowned farmland in Ontario. The success of The Holland Marsh is attributed to a unique combination of soils and hydrology.

Surface water features and interactions with water course crossings along the preferred route are outlined in table 5.1Harten Exhibit M. The first two areas referred to relate directly to The Holland Marsh. The Holland Marsh is economically significant because it represents an almost one billion dollar industry and employs thousands.

With the extensive dewatering that is planned and the related trenching and construction activities it would be reasonable to expect a comprehensive report specifically covering The Holland Marsh. Discussions with The Holland Marsh Growers Association and its director, Mr. Jamie Reaume indicate firm opposition to a pipeline with its potential impact on the agricultural and economic viability of The Holland Marsh.

Dewatering may require a permit under sections 34 and 98 of *The Ontario Water Resources Act*. Further, under Part 8 of the Act, the taking of water from The Holland Marsh-Oak Ridges Moraine Areas may be subject to public consultation under the *Environmental Bill of Rights* requirement, and permission to proceed is not a certainty.

Enbridge does not appear to have adequately considered these circumstances.

Further, a major \$25,000,000.00 project entitled, The Holland Marsh Drainage System Canal Improvement Project (HDMSCIP) has been recently approved and is on the verge of being implemented. To quote from the report, Harten Consulting, Exhibit R, "Construction cannot commence until the report is fully processed. The process may sound simple however the legal procedure behind it is thorough and can be time consuming. According to the *Drainage Act of Ontario*, there are three basic stages: reports consideration, appeals and report adoption."

In view of the extensive dewatering and the right of appeal by landowners to the Ontario Drainage Tribunal, there must be more comprehensive evaluation of impact by the pipeline construction on The Holland Marsh and the construction relevance to the new drainage canal system, and newly proposed water taking and transfer regulations.

#### **LAND OWNER AND COMMUNITY RELATIONS PROGRAMME**

In response to Harten Consulting interrogatory #6, Enbridge has stated there are about 250 properties within 50 metres of the proposed pipeline. Should property owners request a natural gas hook up Enbridge has not commented on whether under Public Utilities legislation, property owners are entitled to a connection and what effect this would have on the supply of gas in a peaking situation to YEC.

Stantec states in 9.1.4 under Land Owner and Community Relations that, "Social effects should be monitored through communication."

In a widely publicized recent case attached as Harten Consulting Exhibit T, Jeremy Engelking, was arrested and handcuffed for trespassing on his own land. He refused to accept an Enbridge offer for an easement, but Enbridge decided to run their pipeline through his land in any event. When he confronted the pipeline installers commencing work on his property Enbridge called the police and had him arrested. Obviously Enbridge community relations and responsibilities should be amplified and explained to affected residents.

#### **Wells and Stakeholders**

Table 5-4 in the Stantec Report on Route Selection states there are 508 wells within 200 metres of the proposed pipeline. Stantec has indicated that pre and post construction evaluation on wells will be done on a voluntary property owner basis.

The Report does not indicate what remedial or compensation measures are available if the quality or quantity of well water is adversely effected by the construction process. Enbridge should undertake to make property owners aware of the potential effects of dewatering and construction.

Harten Consulting, Exhibit S , is an example of a real situation in the Oak Ridges Moraine as a result of installing sewer pipe. It discusses the potential for ecological damage caused by the sludge formed in the dewatering process, alteration and destruction of moraine wetlands of which The Holland Marsh is a vital component.

Despite the complexity of the environmental issues observed in the Stantec Report, Exhibit C, Tab 2 Schedule 1, page 3, indicates \$100,000.00 as the total expenditure on environmental assessment. This represents approximately  $\frac{1}{4}$  of one per cent of the overall project cost, which seems inadequate in addressing and resolving environmental issues of a 16.7 km high pressure natural gas pipeline traversing one of the most sensitive ecological areas of Ontario.

### **POTENTIAL HAZARDS OF A HIGH PRESSURE NATURAL GAS PIPELINE**

The pipeline specifications call for a delivered pressure of 3240 kPa (kilopascals) and a volume of 136 000 cubic metres per hour. The report does not disclose if there is a greater maximum pressure along the pipeline route.

The pipeline will run a distance of 16.7 km and has a diameter of 406 mm (16 inches). While Enbridge is a very experienced operator of gas pipelines its experience with lines of this pressure may be somewhat limited.

Enbridge has stated, "The pipeline has been designed to meet or exceed all applicable codes standards or regulations."

This is true of all gas pipeline installations in North America and yet there are hundreds of explosions every year.

When one considers the explosive potential of a small low pressure pipeline supplying a residence and the possibility of levelling that residence in the event of an explosion, it is difficult to relate such an incident to the potential vast destructive force if this gas pipeline were to explode.

A study paper, Harten Consulting, Exhibit N, describes the hazards of a high pressure natural gas pipeline explosion and estimates the radius of destruction as being up to 300 metres. Because of the pressures and volumes of gas in the proposed pipeline and the possibility of an accident or intentional act there needs to be a detailed specific plan and hazard assessment including damage to fragile ecosystems.

#### Risk factors to be considered in connection with this gas pipeline are:

1) It is in proximity to schools, (The Kettleby School and the Holland Marsh District Christian School, as well as other occupied buildings.

2) As Enbridge has stated in response to Harten's Interrogatory #21 "The pipeline will be constructed within public road allowances." There is a potential for considerable seismic effect caused by the vibration and impact of heavy vehicular

traffic travelling in close proximity to the pipeline and of particular note is the fact that the pipeline may be impacted by seismic effects from highway #400 which is to be expanded to twelve lanes.

3) The stop start use of the pipeline with the accompanying tremendous initial surge in supplying gas to a peaker plant is a further compounding factor. Note: Enbridge has stated that they do not supply any gas to any peaker plants in Ontario, thus they cannot draw on any first hand experience in connection with supply of high pressure gas to peaker plants.

4) In their Final Report Stantec has stated, "Further information was provided by Mr. Charles Rhodes during the consultation process that has indicated the preliminary preferred route may cross the southern extension of one or both of two geologic fault zones that run approximately north/south through Cook's Bay at the south end of Lake Simcoe."

This concern is dealt with by Stantec by reference to earlier published generic studies and the *2005 National Building Code of Canada*. There does not appear to be a specific disaster plan in the event the proposed pipeline should be subject to a catastrophic event. A specific manual covering this possibility should be a part of the Enbridge application.

## **PIPELINE COSTS**

Enbridge estimates its capital costs at about 39 million dollars. YEC will be making a 12 million dollar construction contribution and posting a letter of credit for the balance of the capital cost. There is no clarification that on the completion of the pipeline that capital costs and, "Companies Investment," is the same number.

While there are contractual guarantees in place, there are no assurances that in the event of a YEC failure, any deficiencies as well as decommissioning costs will not be allocated to other customers of Enbridge. (Ratepayers)

## **ECONOMICS OF PROCESSING GAS FOR THE PEAKING PLANT**

The original generator was to be 350 megawatts and expected to run about 900 hours per year to supply peaking power. A 435 megawatt generator should supply the same amount of peaking power running about 700 hours per year.

For simplicity purposes, assume the pipeline is depreciated over 20 years which would mean an average annual cost of depreciation of about 2 million dollars. This would mean an approximate cost of \$28,000.00 for each of the 700 hours of operation, and assuming the gas supplied was 136,000 cubic metres per hour, a cost of 20 cents per cubic metre just to cover depreciation of the pipeline.

The above are estimated attributes to depreciation only, and do not of course include any other costs. This number may be of concern since the ultimate cost of course is born by ratepayers.

## **CONCLUSION**

Should the Enbridge application be allowed to proceed as presently presented?

We believe it is lacking in many substantive areas that must be addressed before further consideration. There is universal concern that the Source Protection of the Holland Marsh is threatened. We find the application particularly deficient in those areas of environmental protection that residents of Ontario view as virtually sacrosanct including: the *Oak Ridges Moraine Act*, the *Environmental Assessment Act*, LSRCA Requirements, Municipal and Regional Planning Acts, including Class Environmental Assessments and others.

Has the Enbridge application fallen on the spear of legal impropriety?

Respectfully,

A handwritten signature in black ink, appearing to read "Harvey Tenenbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Harvey Tenenbaum  
Harten Consulting

"Large scale commercial, institutional and industrial development will be directed to the serviced communities"; and

**Whereas** the Township of King Official Plan Section 4.2 Growth Management, 4.2.11

Land Use Compatibility - states:

"New development must be compatible with the existing uses of the adjacent lands. Proposals for development shall include an assessment of the impact of the proposed development on the adjacent land uses including noise, odour, dust, traffic, the physical form of the development and the visual impact of the proposal".

**Whereas** the Strategic Goals for Managing Growth And the Economy contained in the Community Report 2006/07 states:

"Endorse environmentally-friendly, compatible development without depletion of natural resources." and "Attract economic development that complements the rural and scenic character of the community."

**Therefore be it resolved that:**

The Township of King shall prepare a written communication to Ontario Power Authority, to formally register the Township's position that, the Township does not intend to accept any proposal for a natural gas-fired power generation facility to supply additional power to meet the needs of Northern York Region, South Simcoe and the integrated provincial electricity supply system.

That rather than locating the gas-fired power generation facility in a rural zone adjacent to the Holland Marsh vegetable growing area, the facility would be more appropriately located in an existing commercial/industrial area; and

Further, be it resolved, that the Township of King supports conservation and peak demand management initiatives as well as combined heat and power projects and electricity generation using renewable energy sources.

And that a copy of the letter shall be sent to the Minister of the Environment, Ontario Energy Board, and the Municipal Region of York.



Hon. George Smitherman  
July 2<sup>nd</sup>, 2008  
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**THEREFORE, COUNCIL OF THE TOWNSHIP OF KING HEREBY RESOLVES AS FOLLOWS:**

**That given that the OPA process is fundamentally flawed and that the Minister of Energy has not responded to the request made by the Township to reconstitute the Northern York Region Working Group to develop a better plan, Council of the Township of King will not be willing host to the current proposal of a natural gas-fired peaking generation plant, based on the unresolved environmental, health and quality of life concerns of its citizens and will oppose all applications for the location of a gas fired peaking generation plant in the Township;**

**That the Township of King requests that the Minister of Energy and the OPA immediately halt the RFP process;**

**That the Township of King again requests the Minister of Energy to direct the OPA to reconstitute the Northern York Region Working Group to develop a better plan and process to meet Northern York Region's electricity needs.**

A copy of the Minutes of the July 2<sup>nd</sup>, 2008 Council Meeting is enclosed, together with a copy of our previous correspondence of April 15<sup>th</sup>, 2008 regarding this matter.

Yours truly



Chris Somerville  
Township Clerk  
Encls.

c.c. Julia Munroe, MPP, York Simcoe  
Helena Jaczek, MPP, Oak Ridges Markham  
Jason Chee-Aloy, Director of Procurement, Ontario Power Authority  
Scott Somerville, CAO, Township of King



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

November 17, 2008

**Private & Confidential**

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Department  
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Zoltan Kaslik  
CR Counsel

Dear Ms Tenenbaum:

**Re: Lawyer Licensee: Giuseppina Matera**  
**Complainant: Judith Tenenbaum**  
**Case No: 2008-66011**

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The Law Society has completed a review of the lawyer Giuseppina Matera's (the "Lawyer") professional conduct in this matter. The review was conducted to determine if there is sufficient evidence of professional misconduct to support further regulatory proceedings involving the Lawyer. This letter sets out the results of the review.

**1. DISPOSITION**

The Law Society has concluded that there is evidence suggesting that the Lawyer breached the Law Society's *Rules of Professional Conduct*. In the circumstances of this matter, the appropriate regulatory response by the Law Society to address the professional conduct concerns would be to caution the Lawyer about the issue. A Caution is a form of regulatory response by the Law Society where there is evidence suggesting a breach of the *Rules of Professional Conduct*. A Caution is a remedial written communication with the Lawyer. The Caution includes a warning to the Lawyer that the conduct is not to be repeated. A Caution letter by the Law Society to a Lawyer represents **Significant** professional governance action and is part of the Lawyer's Law Society record.

**2. BACKGROUND**

The Complainant is a resident of King Township in Ontario (the "Township"). The Lawyer acted on behalf of the Complainant's Township concerning its involvement with the Ontario Power Authority (the "OPA"). It was discovered by the Complainant that the Lawyer's firm Aird & Berlis LLP (the "Firm") simultaneously also acted for the OPA. The Law Society received a complaint concerning the alleged conflict of interest by the Lawyer concerning the matter from the Complainant on June 3, 2008.

**Lawyer Licensee: Giuseppina Matera**  
**Complainant: Judith Tenenbaum**  
**Case No: 2008-66011**  
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### ***3. REGULATORY ISSUES***

The issue is whether the Lawyer was acting in a conflict of interest concerning her retainer with the Township in the circumstances.

### ***4. EVIDENCE***

The Law Society has considered the following material and information:

- The Complainant's letter of complaint to the Law Society with attached materials dated May 29, 2008;
- The Lawyer's response dated August 21, 2008;
- The Complainant's reply letter and attached materials dated September 8, 2008;
- Additional materials received from the Lawyer dated October 16, 2008.

### ***5. COMPLAINANT'S POSITION***

The Law Society received correspondence and materials from the Complainant on June 3, 2008 concerning an alleged conflict of interest by the Lawyer. The Complainant advised that the Lawyer acts as counsel to the Township. On April 28, 2008, the Complainant attended a public meeting of the Town's Council (the "Town Council Meeting") regarding a motion brought by a Councilor Mortelliti seeking that written notice be given to the OPA that the Township opposed any natural gas fired power generation facility being located within the Township. The Township advised that the OPA was 'aggressively' seeking a location and a willing host for such a generator. The Complainant advise further that, at the meeting, the Lawyer advised the Town Council not to pass the motion. The Complainant advised that, consequently, the motion was defeated. The Complainant subsequently discovered that the Lawyer's Firm acts for the OPA.

### ***6. LAWYER'S RESPONSE***

The Lawyer denies all the allegations of misconduct of the Complainant.

The Lawyer does concede that she acted as Counsel for the Township concerning its matter with the OPA and that her Firm acted simultaneously for the OPA.

The Lawyer states that the Complainant misunderstands her role and retainer with the Township. The Lawyer states that her role was very limited and precisely defined and was:

"solely to give advice to the Town's Council on matters of procedure and process so that, whatever decision Council might come to on any matter, its decision would be unimpeachable with respect to the way in which the decision was reached."

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The Lawyer states further that she was not retained to provide an opinion on the substance of the proposal and "scrupulously" avoided doing so.

The Lawyer states that she did attend the Town Council meeting and was first consulted by the Township concerning the matter on April 22, 2008. The Lawyer states however that she first learned of the allegation of conflict of interest on July 2, 2008 from a Township official while she was on holiday in Europe and after her participation in the Town Council Meeting. The Lawyer also states she gave further advice concerning process and procedure dealing with the Township's involvement with OPA on June 25, 2008 and at a further special Township council meeting on July 2, 2008 she also participated by drafting certain motion materials.

The Lawyer states that she has been acting for the township, in total, for some fifteen (15) years and that she is the lawyer at the Firm with primary responsibility for the Township as its client.

The Lawyer states that she was not aware that the Firm acted for the OPA at all and, as stated above, first learned of the Firm's involvement in the matter with the Township on July 2, 2008.

The Lawyer states that both her and her Firm take the position that there is no conflict of interest in the matter by either. The Lawyer states however that after she first reported the alleged conflict of interest to the Township on August 6, 2008 and formally at the Township meeting on August 18, 2008 she advised the Township Council that she would no longer act for the Township in relation to this matter – "given its highly political nature".

## **7. ANALYSIS**

*The Rules of Professional Conduct* provide that:

### **2.04 AVOIDANCE OF CONFLICTS OF INTEREST**

#### **Definition**

2.04 (1) In this rule:

A conflict of interest or a conflicting interest means an interest:

- (a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or
- (b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

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#### **Avoidance of Conflicts of Interest**

- (2) A lawyer shall not advise or represent more than one side of a dispute.
- (3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

The Law Society does not agree with the Lawyer and her Firm's position concerning their conduct in the two retainers and the potential conflict of interest in this matter. The ambit of Rule 2.04 (3) is widely worded and prohibits a lawyer from acting or continuing to act "when there is or *likely to be*" a conflicting interest. In this matter, it is apparent that the OPA and the Township may have different and competing interests presently or in the future and it is entirely unclear from the materials provided by the parties how members of a single firm can represent both simultaneously.

Further, the Lawyer has conceded in her response to the Law Society that she was unaware of the Firm's retainer for the OPA until July 2, 2008. Given that the Lawyer was first consulted by the Township on April 22, 2008 it is also unclear what, if any, conflict check was performed by either the Lawyer or the Firm on either retainer at the material time, that is prior to April 22, 2008 or at the time of the initiation of the OPA retainer that involved the Township. From the materials provided by the Lawyer to the Law Society, it appears that a conflict check by either the Firm or the Lawyer was simply not done. Further the Lawyer continued to act for the Township after the conflict was brought to her attention and the matter was not formally dealt with (and first reported to the Township) until August 6, 2008, a month later. While the Lawyer states that she was on holiday during this period, it is unclear why a conflict check could not have been performed on or about July 2, 2008 and the matter reported, in some form by some member of the Firm, perhaps even the Firm's Conflict Committee in the absence of the Lawyer on a timely basis.

As a result, there does not appear to be any effort to have obtained either clients' consent nor does there appear to have been any "Chinese Wall" concerning the two retainers during the period of April to August 2008 (or thereafter) constructed or even considered. While the Lawyer and her Firm appear to have taken the position that they will no longer act for the Township in relation to this matter, the Lawyer and the Firm appear to have left open the possibility of continuing to represent the Township on other matters that they may determine to *not* be in relation to this matter. Again, such matters would have to be disclosed to the Township, on a timely basis, and be subject to the informed consent of the Township and any other related parties and not solely at the discretion of the Lawyer and the Firm. Finally, given the Lawyer's lengthy history as counsel to the Township, it is also unclear on what basis the decision was made by the Firm to continue to act for the OPA but not the Township. In the circumstances, there is an appearance that the OPA was preferred by the Firm over the Township which makes

Lawyer Licensee: Giuseppina Matera  
Complainant: Judith Tenenbaum  
Case No: 2008-66011  
Page 5 of 6  
November 17, 2008

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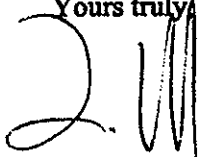
the issue of the implementation of "Chinese Walls" and the Law Society's *Rules of Professional Conduct* with respect thereto even more applicable concerning the Townships documents and materials that are related to this and perhaps other matters.

It is important to understand that the Law Society requires clear and convincing proof based on cogent evidence before it can proceed with regulatory proceeding against a lawyer or accept a lawyer's response position and dismiss a complaint. This standard of proof helps maintain a balance of procedural fairness between the lawyer's proper professional interests and the Law Society's regulatory mandate to protect the public from lawyers who act unprofessionally. This is a different threshold than if this matter were brought before a Judge. The Law Society can only make a determination on the basis of clear and convincing proof based on cogent evidence. To be clear, the Law Society has not assessed credibility as between the Complainant and the Lawyer and has not accepted or preferred the Complainant's evidence to the Lawyer's or *vice versa*. The outcome of this complaint is based on the Law Society's conclusion that the evidence provided by the Complainant and Lawyer concerning the events in this matter satisfies the required standard of proof.

#### **8. CONCLUSION**

As indicated, there is evidence in this matter suggesting that the Lawyer breached the Law Society's *Rules of Professional Conduct*. The evidence would not support further discipline proceedings. The Law Society has therefore cautioned the Lawyer and subsequently closed this file. You may ask the Complaints Resolution Commissioner to review this complaint in accordance with the enclosed information sheet by making a request in writing within 60 days of the date of this letter..

Yours truly,



Zoltan Kaslik  
Complaints Resolution Counsel  
ZK:km

Encl.  
Information Sheet



*Sent by Facsimile 1-905-479-9326*

April 7, 2009

File No. : Project No. 1049283

IMS Nos. : PEAA313C2



Mr. Rooly Georgopoulos, B.Sc.  
Project Manager  
Jacques Whitford Stantec Limited  
7271 Warden Avenue  
Markham, ON L3R 5X5

Tel: 905-895-1281  
1-800-463-0437  
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E-Mail: [info@lerca.on.ca](mailto:info@lerca.on.ca)  
Web: [www.lerca.on.ca](http://www.lerca.on.ca)

120 Bayview Parkway  
Box 282  
Newmarket, Ontario  
L3Y 4X1

Dear Mr. Georgopoulos:

**Re: Notice of Commencement of Environmental Assessment  
Enbridge Gas Distribution Inc.  
Natural Gas Pipeline to Serve York Energy Centre LP  
Township of King, Regional Municipality of York**

This letter is in response to your Notice of Study Commencement for Environmental Assessment for a natural gas pipeline to serve the proposed York Energy Centre LP (YEC). The proposed gas pipeline is a 16 inch to 20 inch diameter steel pipeline which would originate from Enbridge's Schomberg Gate Station at 4955 Lloydtown-Aurora Road in Pottageville, and terminate at the YEC facility at 18781 Dufferin Street in King Township.

Based on the key plan provided in your notice, we note that within the study area there are several watercourses and their associated hazards (e.g. floodplains), Provincially Significant and "other" wetlands, biological and physical environmentally significant areas (ESAs); provincially significant life science and earth science Areas of Natural and Scientific Interest (ANSIs). We note that parts of the study area are within the Oak Ridges Moraine Conservation Plan area as well as the Greenbelt Plan area.

The alternative to be selected must address the following:

- surface water and groundwater protection
- fish habitat protection
- minimization of vegetation removal
- floodplain management
- erosion and sediment control
- avoidance of wetlands, ANSIs and ESAs wherever possible
- wildlife habitat protection/mitigation
- site restoration

**A**

**Watershed**

**for Life**

Mapping is available from our office. Please contact Darren Campbell at 905-895-1281, extension 249, in this regard.





April 7, 2009  
File No.: Project No.1049283  
IMS Nos. : PEAA313C2  
Mr. Rooly Georgopoulos, B.Sc.  
Jacques Whitford Stantec Ltd.  
Page 2 of 2

The study area is partially located within the natural core, natural linkage and countryside designation of the ORMCP and the specific provisions of the Plan regarding transportation, infrastructure and utilities for this designation should be addressed. Please refer to Section 41 of the ORMCP to ensure that your study/evaluation/assessment satisfies the requirements of the Plan.

The study area is partially located within the Greenbelt Plan area.. Please refer to Section 4.2 of the Greenbelt Plan to ensure that your study/evaluation/assessment satisfies the requirements of the Plan.

Parts of the lands within the study area are regulated by the LSRCA. As such, a permit under Ontario Regulation 179/06 of the *Conservation Authorities Act* will be required for any development within the regulated areas. An evaluation of any proposed works may also be required under our Level III fish habitat agreement with the Federal Department of Fisheries and Oceans (DFO).

If you have any further questions, please do not hesitate to contact me. Please reference the above file numbers in future correspondence.

Yours truly,

  
Jackie Burkart  
Senior Planner

JB/ph

c. Mr. Paul Kulyk, Township of King, 1-905-833-2300 - Fax



Sent by Facsimile 1-416-495-6072

October 22, 2009

Ms. Bonnie Jean Adams  
Regulatory Coordinator  
Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York, ON M2J 1P8

Tel: 905-895-1281  
1-800-465-0437  
Fax: 905-853-5881  
E-Mail: info@lsrca.on.ca  
Web: www.lsrca.on.ca

120 Bayview Parkway  
Box 282  
Newmarket, Ontario  
L3Y 4X1

Dear Ms. Adams:

Re: Enbridge Gas Distribution Inc.  
Notice of Application and Hearing  
Leave To Construct Natural Gas Pipeline To Supply Gas To  
York Region Energy Centre - EB-2009-0187  
Township of King, Regional Municipality of York

Thank you for providing the Lake Simcoe Region Conservation Authority (LSRCA) with a Notice of Application and Hearing filed by Enbridge Gas Distribution Inc. with the Ontario Energy Board for an order granting leave to construct approximately 16.7 kilometers of 406 millimetre diameter extra high pressure steel pipeline to deliver natural gas to the York Energy Centre LP.

The LSRCA requests that you provide confirmation as to how the proposed route outlined in the application noted above addresses the considerations outlined in our letter dated April 7, 2009. This letter is attached for your reference.

If you have any questions regarding these comments, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "Beverley G. Booth".

Beverley G. Booth, MSc, MCIP, RPP  
Manager, Planning

A

Encl. (1)

**Watershed**

**For Life**

- c. Rooly Georgopoulos – Jacques Whitford Stantec Limited – 1-905-479-9326 Fax  
Paul Kulyk – Township of King – 1-905-833-2300 – Fax  
Councillor J. Rupke – Township of King and member of LSRCA Board of Directors  
Councillor V. Hackson – Town of East Gwillimbury and Chair of LSRCA Board of Directors  
Gayle Wood – CAO – LSRCA  
Michael Walters – Director of Watershed Management – LSRCA

S:\BevBooth\Correspondence\Environmental Assessment\Enbridge Leave to Construct



## Permit Applications

### Permits Under Ontario Regulation 166/06 - Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

[Do I Need A Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Permit From the Conservation Authority?](#)

[How Do I Apply for a Permit?](#)

[What Happens to My TRCA Permit Application?](#)

[Why is Regulation 166/06 Important?](#)

### Do I Need A Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Permit From the Conservation Authority?

Under [Ontario Regulation 166/06 - \[33K\]](#), the Toronto and Region Conservation Authority regulates and may prohibit work taking place within valley and stream corridors, wetlands and associated areas of interference and the Lake Ontario waterfront. If your property is regulated, you must apply for a permit from the Conservation Authority in order to do any of the following works:

- a. straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b. development, if in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Where Development is defined as:

- a. the construction, reconstruction, erection or placing of a building or structure of any kind,
- b. any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- c. site grading, and/or
- d. the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere



Note: Regulations under the Conservation Authorities Act are enforced. Developing, interfering with a wetland or altering a shoreline or watercourse without a permit may result in a fine and prosecution under the Conservation Authorities Act.

[BACK TO TOP](#)

## How Do I Confirm that My Property is Regulated?

Most of the lands regulated by the Conservation Authority have been mapped in detail. The Regulation Limit mapping, which shows the Authority's Regulated Areas is available through our head office.

If you live close to a stream, river, valley, or watercourse of any kind, a wetland or on the waterfront, and you wish to determine if your property is affected by Ontario Regulation 166/06 or other TRCA policies and programs, contact Planning and Development at the Conservation Authority. Please be prepared with a legal description of your property (e.g. municipal address, lot and concession lines, plan or block number) and a location map. If you want written confirmation and a detailed review of how your property is affected by our regulation, we also provide a [Property Inquiry Service](#) for a fee.

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## How Do I Apply for a Permit?

1. Download a [Permit Application Form](#) - **OR** contact Planning and Development staff to pick up a permit application from our office or have a permit application mailed or faxed to you.
2. Refer to the [Fee Schedule for Permit Applications](#) to determine the category of works and the type of permit you will need as well as the applicable fee. Please forward a cheque in the appropriate amount made payable to the TRCA along with your permit application.
3. Read [Applying for a Permit Information Sheet](#) to ensure that you are submitting all the necessary documents with your permit application.
4. If you are applying for a permit on behalf of the landowner, a Landowner Authorization Form must be completed. This form is part of the permit application.

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## What Happens to My TRCA Permit Application?

Your Development, Interference with Wetlands and Alterations to Shorelines and Watercourses permit application will be assessed to determine whether the proposed works will affect the control of flooding, erosion, dynamic beaches, pollution or the conservation of land. Recommendations will be forwarded to the Executive Committee of the TRCA, who will decide whether to approve or refuse the application. Before refusing an application, however, the Executive Committee will notify the applicant and hold a hearing to which the applicant or his/her agent shall attend. Upon hearing the submission of the applicant/agent and reviewing other

31/12/2009

TRCA: Permit Applications

Page 3 of 4

information submitted, the Executive Committee will make its final decision. If refused, the applicant will be notified of the reasons in writing. Within the 30 days of receipt of the Notice of Refusal, the applicant may appeal to the Mining and Lands Commissioner who may dismiss the appeal or grant permission.

To ensure that your permit application is reviewed in time to be included on the agenda, please ensure that your complete permit application is submitted **8-10 WEEKS** prior to the scheduled Executive Committee date.

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## **Why is Regulation 166/06 Important?**

Ontario Regulation 166/06 is important because it protects watercourses, wetlands, shorelines and valley lands, and it protects you and your neighbours throughout the watershed. Regulation 166/06 enables us to contribute to the health and integrity of the regional greenspace system and to maintain or improve the hydrological and ecological functions performed by valley and stream corridors. These corridors are important for groundwater recharge and discharge; they provide fish and wildlife habitat; contain rich archaeological and natural heritage resources; and they improve air quality.

In addition, Regulation 166/06 ensures that works within the regulated areas will not create a hazard to life and property in other parts of the watershed. Every year, the Toronto region experiences severe storms and periodic flooding. Unrestricted development within a floodplain increases the risk of "loss of life, personal injury, and property damage." Fill placed on a valley or bluff slope can aggravate existing erosion problems or create new ones. Development can also affect neighbouring properties by changing the physical characteristics of the floodplain and stream. Likewise, unrestricted development along the Lake Ontario waterfront may be damaged by flooding due to high lake levels and severe wave action.

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## **Works requiring authorization from the Department of Fisheries and Oceans**

Section 35(1) of the federal Fisheries Act states that "no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat" [HADD]. Any proposed works that are likely to alter or damage fish habitat must be reviewed and authorized by the Department of Fisheries and Oceans (DFO). The TRCA has a level 3 agreement with DFO, which means that the Authority screens and processes applications for DFO. During the review of a development or permit application, TRCA staff may find that there is a possibility of a HADD. The TRCA will either: 1) advise the applicant on how to avoid any damage to fish habitat; 2) advise the applicant on procedures for mitigating the impacts on fish habitat by redesigning the project to lessen the effects; or 3) prepare a compensation package which will require authorization from DFO.

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2009 © Toronto and Region Conservation  
5 Shoreham Drive  
Downsview, Ontario, M3N 1S4, Canada  
Ph: (416) 661-6600  
Fax: (416) 661-6898  
Email: [info@trca.on.ca](mailto:info@trca.on.ca)

**Stantec**  
**FINAL REPORT**  
**Pipeline to Serve York Energy Centre LP**  
**Environmental Features In The Study Area**  
 July 16, 2009

**Table 3-5 Wildlife of the Study Area**

Common Name	Scientific Name
<b>Snakes</b>	
Eastern Garter Snake	<i>Thamnophis sirtalis sirtalis</i>
Northern Redbelly Snake	<i>Soreria occipitomaculata occipitomaculata</i>

Source: Dobbyn, J. 1994. Atlas of the Mammals of Ontario. Federation of Ontario Naturalists, Don Mills, Ontario.  
 Oldham, M.J. and W.F. Weller. 2000. Ontario Herpetofaunal Atlas. Natural Heritage Information Centre, Ontario Ministry of Natural Resources.

Breeding bird species common to the Study Area include mourning dove, American kestrel, American crow, song sparrow, black-capped chickadee, red-winged blackbird, and European starling (Ontario Breeding Bird Atlas, 2001-2005). Wetland birds and waterfowl may occur in the Study Area due to the expanse of swamp and marsh habitat coupled with the proximity of the Study Area to Lake Simcoe. Due to the relatively small size of the fragmented woodlots in the region, the avifauna is likely dominated by edge species that are relatively tolerant of some disturbance. Species requiring larger and more continuous forest tracks (forest interior and area sensitive species) will tend to concentrate in the more extensive forests, Environmentally Sensitive Areas ("ESAs"), and river valleys that are not common to the Study Area.

### 3.3.3.6 Species at Risk

A review of the Natural Heritage Information Centre ("NHIC") species at risk database (2009) and Species at Risk Act ("SARA") registry (2009) has determined that there are a number species of conservation concern known to occur within a radius of approximately 2 km of the Study Area (Table 3-6). This list includes those species with a provincial ranking of S3 or below, as well as those otherwise considered at risk, either federally or provincially. For completion, we have included all species of conservation concern found (presently or historically) in the Study Area, based on the sources identified above.

**Table 3-6 Species of Conservation Concern with Ranges Extending into the Study Area**

Common Name	Scientific Name	SRank	MNR	COSEWIC	SARA	BCR 13
<b>Mammals</b>						
Grey Fox	<i>Urocyon cinereoargenteus</i>	SNA	THR	THR	THR	-
<b>Birds</b>						
Acadian Flycatcher	<i>Empidonax virescens</i>	S2B	END	END	END	SAR
Cerulean Warbler	<i>Dendroica cerulea</i>	S3B	SC	SC	SC	SAR

Table 3-5 Wildlife of the Study Area

Common Name	Scientific Name
Gray Squirrel	<i>Sciurus carolinensis</i>
Meadow Vole	<i>Microtus pennsylvanicus</i>
Muskrat	<i>Ondatra zibethicus</i>
Northern Flying Squirrel	<i>Glaucomys sabrinus</i>
Norway Rat	<i>Rattus norvegicus</i>
Porcupine	<i>Erethizon dorsatum</i>
Red Squirrel	<i>Tamiasciurus hudsonicus</i>
White-footed Mouse	<i>Peromyscus leucopus</i>
Woodchuck	<i>Marmota monax</i>
Carnivores	
Coyote	<i>Canis latrans</i>
Mink	<i>Mustela vison</i>
Raccoon	<i>Procyon lotor</i>
Red Fox	<i>Vulpes vulpes</i>
Striped Skunk	<i>Mephitis mephitis</i>
Deer	
White-tailed Deer	<i>Odocoileus virginianus</i>
Salamanders	
Jefferson-blue Spotted Salamander Complex	<i>Ambystoma jeffersonianum</i> -- laterale complex
Jefferson-blue Spotted salamander Polyploids	<i>Ambystoma jeffersonianum</i> -- laterale polyploids
Frogs and Toads	
Bullfrog	<i>Rana catesbeiana</i>
Eastern American Toad	<i>Bufo americanus americanus</i>
Green Frog	<i>Rana clamitans melanota</i>
Gray Treefrog	<i>Hyla versicolor</i>
Northern Leopard Frog	<i>Rana pipiens</i>
Northern Spring Peeper	<i>Pseudacris crucifer</i>
Western Chorus Frog	<i>Pseudacris triseriata</i>
Wood Frog	<i>Rana sylvatica</i>
Turtles	
Common Map Turtle	<i>Graptemys geographica</i>
Common Snapping Turtle	<i>Chelydra serpentina</i>
Midland Painted Turtle	<i>Chrysemys picta marginata</i>



**Table 3-4 Wetlands and Areas of Natural and Scientific Interest Located in the Study Area**

Name	Significance	Type	Location	Description
Snowball Wetland Complex	-	Wetland	Located in the southeastern portion of the Study Area, south of 18th Sideroad between Dufferin St. and Bathurst St.	A wetland composed of 14 individual wetlands that consist primarily of swamp and marsh wetland types.

### 3.3.3.5 Wildlife and Wildlife Habitat

Wildlife depends on specific habitat types for survival, and some species are more sensitive to disturbance than others. For example, raccoons are highly adaptable to urban environments, while grey wolves are usually found in large tracts of relatively undisturbed forest. Species that are less adaptable may experience a population decline if habitat is lost or if major artificial disturbance occurs. Usually, habitat type is indicative of the types of species that occur in the area. Table 3-5 lists species that are commonly found in the vicinity of the Study Area. Common wildlife species were determined through the use of the Atlas of the Mammals of Ontario and the Ontario Herpetofaunal Summary Atlas (Dobbyn, 1994; Oldham and Weller, 2002).

**Table 3-5 Wildlife of the Study Area**

Common Name	Scientific Name
<b>Shrews and Moles</b>	
Common Shrew	<i>Sorex cinereus</i>
Northern Short-tailed Shrew	<i>Blarina brevicauda</i>
<b>Bats</b>	
Big Brown Bat	<i>Eptesicus fuscus</i>
Little Brown Bat	<i>Myotis lucifugus</i>
Northern Long-eared Bat	<i>Myotis septentrionalis</i>
<b>Rabbits and Hares</b>	
Eastern Cottontail	<i>Sylvilagus floridanus</i>
European Hare	<i>Lepus europaeus</i>
Snowshoe Hare	<i>Lepus americanus</i>
<b>Rodents</b>	
Beaver	<i>Castor canadensis</i>
Deer Mouse	<i>Peromyscus maniculatus</i>
Eastern Chipmunk	<i>Tamias striatus</i>

**Stantec**

**FINAL REPORT**

Pipeline to Serve York Energy Centre LP  
 Environmental Features In The Study Area  
 July 18, 2009

**Table 3-5 Wildlife of the Study Area**

Common Name	Scientific Name
<b>Snakes</b>	
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Source: Dobbynt, J. 1994. Atlas of the Mammals of Ontario. Federation of Ontario Naturalists. Don Mills, Ontario.  
 Oldham, M.J. and W.F. Welser. 2000. Ontario Herpetofaunal Atlas. Natural Heritage Information Centre, Ontario Ministry of Natural Resources.

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**3.3.3.6 Species at Risk**

A review of the Natural Heritage Information Centre ("NHIC") species at risk database (2009) and Species at Risk Act ("SARA") registry (2009) has determined that there are a number species of conservation concern known to occur within a radius of approximately 2 km of the Study Area (Table 3-6). This list includes those species with a provincial ranking of S3 or below, as well as those otherwise considered at risk, either federally or provincially. For completion, we have included all species of conservation concern found (presently or historically) in the Study Area, based on the sources identified above.

**Table 3-6 Species of Conservation Concern with Ranges Extending into the Study Area**

Common Name	Scientific Name	SRank	MNR	COSEWIC	SARA	BCR 13
<b>Mammals</b>						
Grey Fox	<i>Urocyon cinereoargenteus</i>	SNA	THR	THR	THR	-
<b>Birds</b>						
Acadian Flycatcher	<i>Empidonax virens</i>	S2B	END	END	END	SAR
Cerulean Warbler	<i>Dendroica cerulea</i>	S3B	SC	SC	SC	SAR

Stantec

## FINAL REPORT

Pipeline to Serve York Energy Centre LP

Environmental Features In The Study Area

July 18, 2009

Table 3-6 Species of Conservation Concern with Ranges Extending into the Study Area

Common Name	Scientific Name	SRank	MNR	COSEWIC	SARA	BCR 13
Henslow's Sparrow	<i>Ammodramus henslowii</i>	S1B	END	END	END	SAR
Hooded Warbler	<i>Wilsonia citrina</i>	S3B	THR	THR	THR	SAR
Least Bittern	<i>Ixobrychus exilis</i>	S3B	THR	THR	THR	-
Loggerhead Shrike	<i>Lanius ludovicianus</i>	S2B	END	END	END	SAR
Peregrine Falcon anatum subspecies	<i>Falco peregrinus anatum</i>	S2S3B	-	Non-active	THR	SAR
Redhead	<i>Aythya americana</i>	S2B	-	-	-	-
Ruddy Duck	<i>Oxyura jamaicensis</i>	S2B	-	-	-	-
Yellow-breasted Chat	<i>Icteria virens</i>	S2S3B	SC	SC	SC	SAR
Yellow Rail	<i>Coturnicops noveboracensis</i>	S4B	SC	SC	SC	-
Reptiles and Amphibians						
Milksnake	<i>Lampropeltis triangulum</i>	S3	SC	SC	SC	-
Northern Map Turtle	<i>Graptemys geographica</i>	S3	SC	SC	SC	-
Blanding's Turtle	<i>Emydoidea blandingii</i>	S3	THR	THR	THR	-
Fish						
Redside Dace	<i>Clinostomus elongatus</i>	S2	END	END	SC	-
Insects						
Brush-tipped Emerald	<i>Somatochlora walshii</i>	S4	-	-	-	-
Eastern Red Damselfly	<i>Amphiagrion saucium</i>	S4	-	-	-	-
Kennedy's Emerald	<i>Somatochlora kennedyi</i>	S4	-	-	-	-
Monarch	<i>Danaus plexippus</i>	S4B, S2N	SC	SC	SC	-
Tapered Vertigo	<i>Vertigo elatior</i>	S2S3	-	-	-	-

**Startec**

**FINAL REPORT**

Pipeline to Serve York Energy Centre LP  
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**Table 3-6 Species of Conservation Concern with Ranges Extending into the Study Area**

Common Name	Scientific Name	SRank	MNR	COSEWIC	SARA	BCR 13
<b>Plants</b>						
American Ginseng	<i>Panax quinquefolius</i>	?	?	END	END	-
Brainerd's Hawthorn	<i>Crataegus brainerdii</i>	S2	-	-	-	-
Butternut	<i>Juglans cinerea</i>	S3?	END	END	END	-
Purple Twayblade	<i>Liparis lilifolia</i>	S2	END	END	END	-
Schweinitz's Sedge	<i>Carex schweinitzii</i>	S3	-	-	-	-

Note: SRank: S1 Critically Imperiled; S2 Imperiled; S3 Vulnerable; S4 Apparently Secure; S5 Secure; SNA Not Applicable; SZB Breeding migrants/vagrants; SZN Non-breeding migrants/vagrants; S? Questionable Rank.  
 MNR, COSEWIC and SARA Ranking: SC - Special Concern; THR - Threatened; END - Endangered.  
 Source: NHC 2009a; SARA 2009; Partners In Flight 2006.

Although suitable habitat for many of these species is present within the study area, the proposed pipeline will be located within existing road RoWs. These areas are generally disturbed and lack suitable habitat for many of these species.

### 3.3.4 Assessment of Function

The assessed functions of the biophysical features for the preferred route are reviewed in the following sections. The assessment has been based upon the location of the pipeline in existing road RoWs that are cleared on a regular basis. The roadside vegetation communities observed within the preferred route include: Mineral Cultural Meadow, Mineral Cultural Thicket, Mineral Shallow Marsh, Cultural Woodland (plantations) and Organic Deciduous Swamp. Mineral Cultural Meadow is the dominant vegetation community with the other vegetation communities located along Dufferin Street north of Davis Drive.

#### 3.3.4.1 Ecological Function of Habitats Along the Preferred Route

The following sections assess the ecological function of the natural habitats found along the preferred route and within the cleared road RoW and how they are connected to adjacent habitats. Impacts to the ecological function of these habitats are discussed in Section 6.2.

#### Biodiversity

Biodiversity is a measurement of the diversity of species and habitats within a given area. A more diverse site is more resilient to disturbances whether natural or human induced as they are more quickly able to rebound following the disturbance (Daigle and Havinga, 1996). The majority of the preferred route consists of culturally impacted vegetation communities that provide limited tree cover and are dominated by non-native vegetation species that include

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HYDROLOGICAL EVALUATIONS**

July 18, 2009

**6.1.1 Surface and Groundwater Pollution**

Water pollution could potentially result from erosion and sedimentation, disposal of water used for hydrostatic testing and spills of fuels and chemicals during construction. This could have downstream impacts on water dependent ecosystems such as fish and fish habitat, recreational uses or water extraction users. Mitigation measures described in Section 7.1 should be employed in areas with the potential to impact watercourses, wetlands, and groundwater seeps, all of which are considered surface water features. Potential impacts of drilling fluid release from HDD is described in Section 7.7.

**6.1.2 Aquatic Environment**

Water pollution, erosion and sedimentation, and reduced surface and groundwater flow regimes may have adverse environmental impacts to fish and fish habitat. The primary concern regarding potential effects of pipeline construction on fish and fish habitat is species viability and potential impacts to spawning/nursery activities. Mitigation measures are presented in Section 7.2.

**6.1.3 Changes to Existing Surface and Groundwater Flow Regimes**

Normal pipeline excavation is shallow, approximately 2 m, and will likely encounter elevated groundwater tables at numerous locations along the Preferred Route. In this scenario, and in wet areas, construction dewatering may be required to lower the near-surface water table to enable excavation of the trench. Mitigation measures are presented in Section 7.3.

**6.1.4 Vegetation Environment**

Road allowances undergo continual management by municipal and provincial road crews. Grass and brush cutting, pesticide spraying, and salt deposition are also common occurrences. As a result, vegetative cover within road allowance generally consists of common, hardy plant species that are adaptable to disturbed environments.

Clearing of vegetation will occur in the existing road RoW and the temporary workspace. The vegetation to be removed is common to the area and is expected to regenerate naturally over time. Mitigation measures are presented in Section 7.4.

**6.1.5 Soil Integrity**

Soils are more susceptible to erosion during construction due to the loss of vegetative cover and the physical disruption caused by excavation. Local watercourses are at higher risk to sedimentation due to erosion and runoff, especially near steep slopes and in wet areas, where heavy machinery may cause rutting in the soil. Other impacts to soils include erosion and

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HYDROLOGICAL EVALUATIONS**

July 16, 2009

**Spills of Fuels and Chemicals**

- All activities, including equipment maintenance and refuelling, should be controlled to prevent entry of petroleum products or other deleterious substances, including any debris, waste, rubble or concrete material, into a watercourse, unless otherwise specified in the contract. These should be >100 m from the watercourse at all times as per the ECM (Enbridge, 2009). Any such material that inadvertently enters a watercourse should be removed by the Contractor in a manner satisfactory to the Environmental Inspector. In the unlikely event of a spill, the MOE Spills Action Centre should be contacted and spills containment and clean-up procedures implemented immediately.
- Construction material, excess material, construction debris, and empty containers should be stored away from watercourses and watercourse banks.

With proper implementation of these mitigation and protective measures, construction related activities should not impact surface or groundwater quality along the Preferred Route.

**7.2 Aquatic Environment**

- Enbridge or any subcontractor will not obstruct any watercourse in a way that impedes the free movement of water and fish.
- Watercourse crossings are preferred to be performed during the summer months when fish are not migrating or spawning and water flow is low.

No work will be conducted in any watercourse and as such, with the implementation of the appropriate mitigation measures, no effects to the aquatic environment are anticipated resulting from these crossings.

**7.3 Changes to Existing Surface and Groundwater Flow Regime**

- Identification of any wells within 100 m of the Preferred Route.
- Provide nearby well owners the option to participate in a water well monitoring program prior to construction to determine preconstruction quality and quantity conditions. The water quality and quantity, and levels of these water wells should be monitored prior to and following any construction activity, such as blasting, hoe-ram, and HDD which may take place.
- If dewatering is required at a rate in excess of 50,000 L per day, a Permit to Take Water will be required from the MOE. Associated dewatering should be discharged in a vegetated area or into a filter system to eliminate sedimentation and ground scouring.

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**HYDROLOGICAL EVALUATIONS**

July 16, 2009

In addition to the West Holland River, other notable surface water features within the Regional Study Area are the Holland Marsh Drainage System, the Holland Marsh Lowlands and five provincially significant wetland areas. The Preferred Route does not traverse any of these surface water features and wetland areas. However, some of these areas receive drainage from the watercourses intersected along the Preferred Route and potential interactions should be considered. Table 5-1 summarizes these features and their interaction with the watercourse crossings. Figure 1-1 can be used to identify these locations in relation to the study area.

**Table 5-1 Surface Water Features and Interaction with Watercourse Crossings Along the Preferred Route**

Name	Significance	Location	Description	Interaction
Holland Marsh Drainage System (HMDS)	Constructed drainage system	Canals and dykes divert flows from the West Holland River entering the Holland Marsh Lowlands at Hwy 9 to two exterior drainage canals	The HMDS provides irrigation and flood control to the marsh to allow farming. The original river serves as the main drain through the center of the marsh. Warmwater sport fisheries are common in the North and South Canals and main drain.	Streams 4, 5, 6, 7, 8 and 9 discharge to the south canal of the HMDS, which in turn provides irrigation and flood control to the Holland Marsh Lowlands.
Holland Marsh Lowlands	Productive farm lands	North of Hwy 9, the lowlands straddle the West Holland River.	The poorly drained soils and muck characteristic of the marsh currently support intensively cultivated fertile farm lands.	Streams 4, 5, 6, 7, 8 and 9 discharge to the south canal of the HMDS, which in turn provides irrigation and flood control to the Holland Marsh Lowlands.
Ansnorveldt Wetland Complex	Provincially Significant Wetland	Located in the northeastern corner of the Study Area between Keele St. and Dufferin St. near the crossroad of Green Lane West.	Wetlands included in this complex are located along six tributary streams in the Holland River watershed and are hydrologically connected along a discharge zone at or near the base of the ORM.	Stream 8 flows through and contributes to the wetland complex downstream of the Preferred Route crossing.

**Table 5-1 Surface Water Features and Interaction with Watercourse Crossings Along the Preferred Route**

Name	Significance	Location	Description	Interaction
Fraser Creek Swamp	Provincially Significant Wetland	Located in the northwestern corner of the study area along River Road near the crossroad of Canal Road.	A swamp that is composed primarily of deciduous trees and robust emergents.	There is no interaction with watercourse crossings along the Preferred Route.
Pottageville Wetland Complex  (includes both the Pottageville Swamp and Pottageville Bog and Swamp)	Provincially Significant Wetland	Located in the southwestern portion of the study area, west of Hwy 400 and south of Hwy 9.	The wetland originally formed part of the Holland Marsh, but became isolated due to the development of the HMDS (Ecologistics, 1982), and is a source area for many of the tributaries that flow into the Holland River.	Streams 1, 2, and 3 discharge to the Pottageville Swamps downstream of the Preferred Route crossing.
Pottageville Swamp North	Regionally Significant Wetland	Located in the western portion of the study area, north of Hwy 9 and west of Canal Road	This regionally significant swamp is an extension of the Pottageville Swamp north of Highway 9.	Streams 1, 2, and 3 discharge to the Pottageville Swamps downstream of the Preferred Route crossing.
Snowball Wetland Complex	Wetland	Located in the southeastern portion of the Study Area, south of 18th Sideroad between Dufferin St. and Bathurst St.	A wetland composed of 14 individual wetlands that consist primarily of swamp and marsh wetland types.	There is no interaction with watercourse crossings along the Preferred Route.

According to the LSRCA, with the exception of the main branch of the West Holland River, and the North Canal and South Canal of the HMDS, which are categorized as supporting warmwater habitat, all remaining tributaries within the study area are classified as coldwater habitat due to significant baseflow contributions. For more information pertaining to these and other natural environment and socio-economic features in the Regional Study Area, refer to the ER (JWSL, 2009).



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## Individual risk analysis of high-pressure natural gas pipelines

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Received 13 February 2008; revised 22 April 2008;  
accepted 22 April 2008. Available online 22 July 2008.

### Abstract

Transmission pipelines carrying natural gas are not typically within secure industrial sites, but are routed across land out of the ownership of the pipeline company. If the natural gas is accidentally released and ignited, the hazard distance associated with these pipelines to people and property is known to range from under 20 m for a smaller pipeline at lower pressure to up to over 300 m for a larger pipeline at higher pressure. Therefore, pipeline operators and regulators must address the associated public safety issues.

This paper focuses on a method to explicitly calculate the individual risk of a transmission pipeline carrying natural

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## OEB Documents 2: LESSONS LEARNED FROM KATRINA (2nd of 2 emails)

**Katharine Parsons** (katharineparsons@gmail.com)

January 3, 2010 7:52:02 PM

harten2000 (harten2000@hotmail.com)

Harvey Tenenbaum (h.tenenbaum@hartengroup.ca); keparsons@xplornet.com

### Attachments:

CumminsPowerGeneration's Hurricane Katrina.pdf (344 KB), new flood proof gas lines in New Orleans (2009-01-03), Energy replaces 310 miles of high-pressure gas lines in New Orleans (2009-01-03)

### LOCATING GENERATORS ABOVE FLOOD LINES

Cummins Power Generation's **White Paper # 7006 "Lessons in Emergency Power Preparedness: Planning in the wake of Katrina"** is attached. In it they state:

"The only power systems that functioned properly were those that had been properly maintained and located above the floodwaters.."

They go on to warn: "If a generator is located 19 feet above the ground and the tidal surge is 20 feet, it is still going to get flooded out."

It is important to note that in the Holland Marsh area, most of the 7,000 acres during Hurricane Hazel were inundated with between 4 and 30 feet of water. The property for the York Energy Centre is located in a flood plain, and at this point the Lake Simcoe Region Conservation Authority is reviewing the site plan and looking at the flood lines. They will likely perform a HEC-RAS software scenario (this is software developed by the Army Corps of Engineers following Hurricane Katrina) to see how existing structures, rivers and canals will perform under Regional Storm (this is the Hazel scenario) conditions and in light of the fact that climate change has altered the likelihood of severe storms, they will factor that increased frequency in as well. In Conservation Ontario's Final Report 2009, they warned: "Flooding in Ontario is escalating...From 2000 to 2005, Ontario experienced 10 severe storms that exceeded intensities that are normally expected less than once every 100 years."

### PRESSURE FROM FLOOD WATERS CAUSES A BREACH IN GAS LINES

White Paper "Advancing in the Aftermath IV: Tracking the Recovery from Katrina and Rita, the authors reported that Entergy New Orleans, a gas company, replaced 310 miles of high-pressure gas lines in the city of New Orleans alone following Hurricane Katrina (see report "Energy replaces" ATTACHED and highlighted p. 21). Some of this was steel pipeline. Not only did the corrosion from the salt flood water cause infiltration and breaches in the lines, but company spokesman Morgan Stewart stated that they calculated that the pressure from only 7" of water was enough to cause a leak in the lines. (see "new flood proof gas lines" article (ATTACHED and highlighted).

Since the Holland Marsh experienced far more than this -- 4 to 30 feet of flood waters -- during Hurricane Hazel and the nearby Hamlet of Ansonveldt (less than 300 metres from the York Energy Centre site) was inundated during the hurricane, the pressure from the floodwaters should be of concern.

In their Appendix B Hydrological Assessment 6.1.6 Potential Impacts Due to Construction: Floodplain Impacts they deal with regulation of fill as per LSRCA O.Reg. 179/06 for regulated areas (p 11), the requirement for a permit for the construction in a floodplain, and discussed floodplains as they related to various pipeline crossings.

The report states (p. 93): "Based on review of floodplain boundaries mapped by the LSRCA (LSRCA, 2009), construction activities may be proposed to take place within regulated floodplain areas. Although application of the HDD method will minimize the alteration of lands within regulated floodplain areas, floodplains are extensive in some areas and some trenching through floodplains will be necessary. Mitigation measures are

presented in **Section 7.6.**"

The report states that various "floodprone widths" at water crossings be established, ie 1.85 - 40 metres wide, and yet most of the lowlands (Dufferin Street area and the subject property) was underwater during "Tropical Storm Hazel" in 1954 and may be again. The hydrostatic discussions did not deal with the extended pressure by floodwaters that may impact buried high-pressure pipelines the way that Hurricane Katrina impacted Entergy's gas line system in New Orleans.

**HARTEN CONSULTING INTERROGATORY #8**

**INTERROGATORY**

List of water courses to be traversed and any applicable legislation.

**RESPONSE**

A complete description of all watercourses to be crossed along the preferred pipeline route is found in the Hydrological Assessment located in Appendix B of the Environmental Report found in Exhibit B, Tab 2, Schedule 2. Table 1 provided below lists watercourses to be crossed by the proposed pipeline.

**Table 1**

<b><u>Watercourse</u></b>	<b><u>Location Along Preferred Pipeline Route</u></b>
Tributary to Pottageville Creek	Lloydtown Aurora Road west of Concession Road 7
Tributary to Pottageville Creek	Lloydtown Aurora Road east of Concession Road 7
Tributary to Pottageville Creek	Lloydtown Aurora Road east of Weedon Court
Tributary to Kettleby Creek	Jane Street north of Lloydtown Aurora Road
Kettleby Creek	Highway 9 east of Jane Street
Tributary to Kettleby Creek	Highway 9 west of Keele Street
Tributary to Keele Creek	Highway 9 east of Keele Street
Tributary to Glenville Creek	Dufferin Street north of Davis Drive
Unnamed tributary discharging to South Canal	Dufferin Street south of King Street

Witness: E. Makkinga

**Holland Marsh Drainage System Canal Improvement Project (HMDSCIP)*****Background***

The Holland Marsh Drainage System Canal Improvement Project (HMDSCIP) will be a project to restructure 27.8 km of the Canal, including total or partial canal relocation, bottom cleanouts, and structure improvement in select areas. Issues of drainage, flood protection, improved ease of maintenance and life safety, especially regarding human fatalities and flooding, have been the primary motivations for the approximately \$26 million project. Last year, the Holland Marsh Drainage System Joint Municipal Services Board received a \$10.2 million grant from the Ontario Municipal Infrastructure Investment Initiative (MIII). This will reduce some of the cost allocated to the municipalities and landowners of the 72,000 acres within and surrounding the Holland Marsh. The costs will also be distributed amongst the Ministry of Transportation, the County of Simcoe, and the Ontario government.

There has been general compliance from the landowners, who are responsible for anywhere from \$1 to upwards of \$70,000 of the gross cost depending on how many hectares of Marsh land they own. With the various grants, the net costs to landowners are substantially reduced.

Since the fall of 2008, the HMDSCIP has experienced several significant progressions. These events, such as the completion of the engineer's report and trial works, the mailings to and responses from the stakeholders, and the moving forward with legal proceedings, are all important milestones in this multi-million dollar project.

***Engineer's Report***

The key component and most important step thus far has been the completion of the engineer's report which is pursuant to Section 78 of the Drainage Act, R.S.O. 1990. The Drainage Act is a statute of Ontario which outlines the legal process to be followed with respect to any construction, improvement, maintenance or repair of any drainage work in Ontario. Section 78 specifies that any improvement, maintenance or repair by the municipality must be carried out under the specific instruction as outlined in an engineer's report. Kenn Smart, P. Eng., of K. Smart Associates Limited, was appointed by the Town of Bradford West Gwillimbury to prepare an engineering report for the HMDSCIP. This report was completed in January of this year.

A portion of the report involved conducting trial work on two intervals along the canal. This was completed in October and November of 2008. The purpose of the trial work was to develop specific construction methodologies for the final report and to also proactively work out any issues before full construction. Out of 18 possible Intervals along the canal to conduct the trial work, Intervals 1 and 15 were strategically chosen.

Interval 1 (North Canal), located north of Highway 9, was considered one of the worst areas in terms of conditions and repair requirements and would likely give a good assumption of a worst-case scenario. Interval 15 (South Canal), east of Jane Street by the Cardinal Golf Club, was considered the prototypical area which demonstrated the most common canal conditions. This area would provide a most-likely scenario of events for when actual construction takes place. Overall, the cost of the trials came under budget which could suggest accurate cost estimation and efficient work procedures for the overall project.

Additionally, tree-clearing work was conducted from November to December 2008 to comply with MIII's grant requirements. The grant required ground to be broken and a portion of work started by the end of 2008 at the latest. Since the report was not yet completed at that time, and thus construction could not commence, the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), granted the work on an emergency basis to satisfy MIII.

As required by the Drainage Act upon completion of the report, 7000 copies were sent to project stakeholders. Based on land placement and extent of involvement, stakeholders received either a paper copy or a CD of the report which consisted of 4 volumes and approximately 600 pages of text and drawings. The decision to send either a paper copy or CD facilitated substantial cost savings.

As previously mentioned, construction cannot commence until the report is fully processed. This process may sound simple; however, the legal procedure behind it is thorough and can be time consuming. According to the Drainage Act, there are three basic stages:

- ✓ Report Consideration
- ✓ Appeals
- ✓ Report Adoption

Currently, the HMDSCIP has completed the Report Consideration and the first Appeals step being the Court of Revision on June 11th and 12th, 2009.

### ***Report Consideration***

In conjunction with Sections 41 and 42 of the Drainage Act, there are three important processes of the Report Consideration stage. Firstly, the report must be completed. Secondly, the report as well as a notice of a meeting to consider the report must be sent out to landowners. Thirdly, the meeting to consider the report will take place.

- With respect to the HMDSCIP, the report was submitted to the Town of Bradford West Gwillimbury on January 16th, 2009 and the request for Report Consideration sent

out shortly thereafter. On April 22nd, a special meeting of Council was held to consider the engineering report. Council voted to provisionally accept the report as a by-law. After any or all appeals are resolved, the by-law can be given its Third reading and then construction can be authorized to begin. Legally, the report must be registered as a bylaw since it is a municipal undertaking and overseen and approved by Council.

At the Report Consideration meeting on April 22, 2009, a presentation to over 200 attending stakeholders was made by Kenn Smart, P. Eng., from K. Smart Associates Limited. It included a summarized history of the Holland Marsh Drainage System, a cost benefit analysis of the decision to do work, as well as what the stakeholders should expect over the next couple of years. The open-forum presentation left room for questions and concerns from attendees. A number of issues were raised, including environmental concerns, project timing and cost, water table levels, and possible business disruptions due to road closures. Overall, there seemed to be a general consensus between K. Smart Associates and the stakeholders. Concerns were heard, questions were answered, and the presentation concluded. Council then adopted the engineering report provisionally by two readings.

Subsequent to the Report Consideration meeting and the passing of the provisional by-law, a copy of the provisional by-law was sent out to the affected landowners that gave them an opportunity to review the by-law and file appeals through the Drainage Act's specified bodies of appeal. The three bodies of appeal are the Court of Revision, the Drainage Tribunal and the Drainage Referee.

### *Court of Revision*

The Court of Revision for this project took place on June 11th and 12th, 2009, with 7 appellants present. One landowner objected that his allowance was too low, while two other landowners objected that their respective assessments were too high. Another landowner felt that the assessment did not reflect their land's use. A number of appeals were related to the eligibility of the property for the provincial grant (administered by OMAFRA). Tentative agreements were made between some of the appellants and the Court, and all report assessments were sustained. Appellants were given the option to file an appeal re the Court of Revision's decision to the Ontario Drainage Tribunal

### *Drainage Tribunal Appeal Process*

As outlined in the Drainage Act, all landowners have the right to appeal to the Drainage Tribunal the engineer's report and/or individual land assessments, and to request amendments to the provisional by-law. The Drainage Act sets the date for the filing of appeals to be 40 days from the mailing of the provisional by-law.

This date for all appeals expired on July 2<sup>nd</sup>, 2009. Approximately 11 appeals were received and the date for the Drainage Tribunal hearing is currently being arranged.

### ***Ontario Drainage Tribunal***

The Ontario Drainage Tribunal hears two types of appeals: appeals on the technical aspects of the engineer's report, and appeals on the decisions of the Court of Revision. Technical aspects include, but are not limited to, allowances, design, cost benefit and specifications. The process to appeal to the Drainage Tribunal is similar to the Court of Revision in terms of filing a Notice of Appeal with the initiating municipality's (the Town of Bradford West Gwillimbury) Clerk. As outlined by the Drainage Act, most decisions made by the Drainage Tribunal are final but some may be appealed to the Drainage Referee.

### ***Drainage Referee Appeals***

The Drainage Referee hears appeals on the legal aspects of the drainage work as well as appeals on limited decisions made by the Drainage Tribunal. The time period to appeal on legal aspects is also limited to 40 days from the mailing of the provisional by-law and on this project no appeals were received. The process, if implemented, is more involved than appeals to the Court of Revision and Drainage Tribunal. A landowner looking to file an appeal must first file a notice to the initiating municipality's (the Town of Bradford West Gwillimbury) Council and then proceed to apply for a trial before the Drainage Referee. The procedures are formal and legal counsel is advised before proceeding.

### ***Report Adoption***

This occurs after all appeals have been settled. At this point, Council will give the by-law a Third reading which amends it from a provisional by-law to a legal by-law. The by-law, which is essentially the engineer's report, authorizes construction to begin as early as 10 days after the Third reading. It is difficult to approximate the commencement of this stage, as the duration of the preceding Appeals Stage is difficult to forecast. At present time, the adoption stage is tentatively scheduled for fall of 2009.



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## Moraine Drain Sucks Wells, Streams and Wetlands Dry



MASSIVE YORK-DURHAM SEWER CONSTRUCTION  
DEWATERING OF ORM AQUIFERS BESIDE  
ROUGE STREAM.



A BROWN AND BLACK METALLIC SLUDGE COATS  
ROCKS WHERE POLLUTED SEWER CONSTRUCTION  
DEWATERING DISCHARGES TO ROUGE STREAMS.

The adjacent photo shows dewatering (draining) of Oak Ridges Moraine (ORM) aquifers for the twinning and extension of the York Durham sewer in Markham. This poorly-designed project is draining ORM aquifers that support Rouge Park streams, wetlands and rural wells.

### 100+ Square kilometre Impact Area

ORM aquifers in an area of approximately 100 square kilometres have already suffered impacts. The impact area stretches from Warden Avenue in the west to the Pickering Townline in the east and from 14th Avenue in the south to the Oak Ridges Moraine in the north. The middle ORM aquifer has already dropped by 40 to 60 metres (130 to 196 feet) in some locations.

### Removing 50 Billion Litres of Water

In spite of the growing impacts, York Region has asked the Ministry of Environment to permit a doubling of the dewatering rate to more than 34,000 litres per minute. This represents water removal at a rate that would fill a large background swimming pool every minute. Over the next 30 months of construction, more than 50 billion litres would be removed from ORM aquifers. Further proposed sewer segments, northward along Leslie through the ORM and southward through the Rouge Park, could extend the dewatering impacts for several years.

### Servicing 34 More Years of Urban Sprawl





RURAL WELL DEEPENING CANNOT KEEP UP WITH THE AQUIFER DRAWDOWN CAUSED BY THE YORK DURHAM SEWER CONSTRUCTION DE-WATERING.



[Little\\_Rouge\\_almost\\_running\\_dry](#)

DEWATERING OF ORM AQUIFERS THREATENS TO SUCK THE ROUGE RIVER DRY (JULY 30, 2003, LITTLE ROUGE RIVER).



MINERALIZED WATER FROM SEWER CONSTRUCTION STAINS THE GROUND RED AS IT FLOWS TO A ROUGE TROUT STREAM (SEPTEMBER, 2003).



[Bob\\_Hunter\\_story\\_on\\_low\\_water\\_levels](#)

CITY TV REPORTER, BOB HUNTER, VIDEOTAPES LOW WATER-LEVELS IN LITTLE ROUGE RIVER IN SEPTEMBER, 2003.

This billion-dollar project is designed to accommodate human waste from the next 34 years of urban sprawl, all the way to Lake Simcoe. However, the project may have to be revised because of the growing impacts to ORM aquifers, streams and wells. Concerned citizens are asking for a thorough environmental assessment to examine alternatives, impact avoidance, mitigation and cumulative effects. Knowledgeable engineers say there are ways to build the sewer that would not require massive dewatering of ORM aquifers.

#### **Harming the Rouge Park, Oak Ridges Moraine and Lake Ontario**

If current plans are approved, this huge sewer pipe will tunnel through the ORM and trench through the Rouge Park to send an additional 132 billion litres of treated sewage into Lake Ontario each year. Dumping so much treated sewage into Lake Ontario could further pollute our drinking water source and our beaches and harm public health.

The first phases of construction have already reduced well water quality and dried-up many rural wells in Markham, and the impacts will spread if construction and dewatering continues. Many Rouge streams and wetlands that provide habitat for rare species of fish and birds are in danger of drying-up. A few Rouge streams would receive huge amounts of polluted water discharge, creating erosion and harm to trout habitat and aquatic life.

#### **Difficult to Detect or Fix Leaks**

Installing the pipe at great depth will make it difficult and costly to detect or fix any future sewage leaks into ORM aquifers. There is also a danger that the great pressures at this depth will allow groundwater to leak into the stormwater sewer. Groundwater leakage into the sewer is an ongoing loss from the natural aquifer system to the detriment of rural wells, Rouge streams and wetlands.

#### **Better Alternatives can be Found**

A significant portion of the existing York Durham sewer flows are from improper stormwater connections to sanitary sewers. To conserve and restore sewer capacity, the Region could disconnect stormwater flows from existing sanitary sewer pipes and accelerate water efficiency measures. These steps will provide additional sewer capacity and time to complete a proper environmental assessment and to find alternatives that will not drain the Oak Ridges Moraine and suck wells, streams and wetlands dry.

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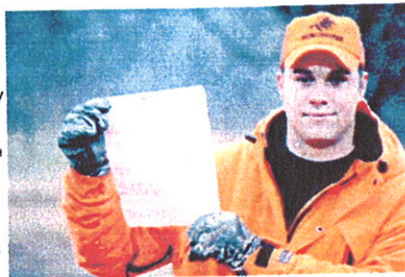
## Superior man accused of trespassing on own land

by J.R. 6. December 2009 15:18

[Superior man accused of trespassing on own land](#)

Jeremy Engelking will appear in Douglas County court this afternoon to face a trespassing charge. But here's the kicker: The Superior man allegedly trespassed on his own property.

Engelking, 27, aimed to hunt deer Wednesday morning when he noticed a pipeline crew on his land. He hopped on his ATV and told workers they had no right to be on his property because he had received no compensation from Enbridge Energy Partners L.P. for an easement.



Engelking said workers told him he was in an unsafe place and asked him to come to an equipment staging area, where he continued to argue his case.

But just as he was turning to leave, Engelking said an officer from the Douglas County Sheriff's Department arrived on the scene and approached with a Taser drawn.

"He ordered me to 'get down on the ground now!' And he said that I was being arrested for trespassing," Engelking said.

When Engelking protested, pointing out that he was on his own property, he said Sgt. Robert Smith told him: "It doesn't matter. You're going to jail. You can tell it to a judge tomorrow."

Engelking offered no resistance, but Smith placed him in handcuffs then transported him to the Douglas County Jail. After posting a \$200 bail bond, Engelking was released that afternoon. He also had to pay about another \$100 to recover his impounded ATV."

It is unbelievable how many rights have been violated in this situation. Lets start with the Enbridge.

"Engelking's arrest Wednesday is the latest episode in a long disagreement he and his father, Jerry Engelking, have had with Enbridge, dating to the company's last pipeline expansion in 2002.

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### About

The website of J.R. Salzman- World Champion Log Roller, Soldier, and wounded Iraq War Veteran.

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### Calendar

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2009										
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Jerry Engelking, who owns 200 acres next to his son, said he refused to sign off on changes proposed to the original 1949 easement across his property because he felt the revisions put too many restrictions on how he could use his property. That original easement said future pipes laid along the same route would require payments in advance.

According to court documents, Enbridge sent a \$15,000 check to Jerry Engelking and also tried to hand-deliver payments, but Engelking refused to accept them.

Engelking said that to claim the money he would have had to broaden the scope of the existing easement across his property, so he turned the checks down. When the latest pipeline project came along, the Engelkings again refused to modify the original 1949 right-of-way agreement.

The family sought a restraining order against Enbridge on Sept. 24, arguing the company intended to use the pipeline for transporting petroleum products other than those originally allowed, protesting that they had not been paid and citing damage to property.

Douglas County Circuit Court Judge George Glonek granted a temporary injunction but lifted it the following day, saying the company's plans for the pipeline were appropriate and efforts had been made to pay the Engelkings. "

Enbridge acknowledges that he has refused the money they offered him but decided to go ahead and run the pipeline across his property anyway even though a) the original 1949 easement contract doesn't allow it and b) the landowner refused any proposed changes. So the guy doesn't want the pipeline run across his property. So when he sees the company running the pipeline without permission, he confronts the workers who in turn call the police. Enter arresting officer. Now, you don't have to have military or civilian law enforcement training to know that the goal in any situation is to diffuse it not escalate it. Apparently the arresting officer was sick that day in the academy and decided to show up with a taser drawn instead. Now before you say "its just a taser," let me share some anecdotal evidence. One of the Soldiers in my fire team in Iraq had previously gone through training to become a police officer in the Duluth area. Part of that training is getting tased. Well obviously something went wrong because the taser knocked him unconscious and left him in a coma for the next 4 days. Tasers are not toys. Apparently the arresting officer once again didn't get the memo (or he did get the memo and simply wanted to try out his shiny new toy). In the military we have EOF, or Escalation of Force procedures we must adhere to. It is a strict set of guidelines dictating what has to happen before we are allowed to escalate any situation to the point of drawing a weapon. Drawing a weapon and using it are always the very last steps in the EOF and should be taken ONLY if absolutely necessary. So did the arresting officer follow EOF (I think the civilian police call it "pyramid of force continuum"? It doesn't look that way. It looks as though the police officer decided to play judge and jury. What about the "he was in hunting gear so he probably thought he had a gun" argument? It doesn't hold water. If the arresting officer thought he was armed and dangerous he would have pulled his gun instead of the taser. After all, you don't bring a taser to a gun fight.

Of course this monstrosity doesn't stop there. After going before the judge Engelking finds out he's being charged with disorderly conduct as well despite the fact he wasn't disorderly. My question is did the arresting officer have a signed warrant to go on his property to arrest him? I'm not sure what the legal requirement is when dealing with easements, but all signs are pointing to no. Furthermore, how can an officer arrest someone for trespassing on their own land? Or, if the easement is considered public land, then how can someone be charged with trespassing at all?

While looking through the comments on this story I came across Jeremy Engelking's side of the story. Apparently Enbridge and the Douglas County Sheriffs Department acted even worse than the story let on:

"After reading comments I want say thank you and I want to clarify some things: Enbridge has not made 1 formal offer to me about the easement. The area where my 4-wheeler was parked and where I was located and arrested was the area a Precision Pipeline employee told me to go for "saftey reasons". As a condition of the check offered by Enbridge they wanted for us to completely change the current restrictions and wording on the easement. I have the additional paperwork. The easement says Enbridge is required to pay money for each additional pipeline put on our property. It also states that the amount is to be paid is before they lay the pipe. The easement states if a payment is not mutually agreed upon what actions are required for the negotiations to move forward. Enbridge has known my parents were not happy with their offer for more than 2 years so they have had more than ample time to take legal action. They also did not pay for the pipeline

Obey Playing Politics With  
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PTSD Stupidity

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## Month List

2009

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16/12/2009

## Superior man accused of trespassing o...

Harten Consulting  
Filed: 2010-01-04  
EB-2009-0187  
Exhibit T  
Page 3 of 3

installed in 2002 because they were requesting additional terms to the easement. As for the firearm. Yes I had one. I was getting done deer hunting (unit 1 m in WI allows that), I was dressed in blaze orange and my gun was fully cased on the front of my 4-wheeler the entire time and never touched. If my gun was an issue at no time during the 30 minute conversation with Precision or Enbridge employees before the Sheriff's department arrived was anything said to me about it. If it was an issue I'm sure the sheriffs department would not have just walked the 400 yards right out to me. They would have taken a more careful approach. \*\*during court today douglas county also issued me a disorderly conduct ticket in addition to the trespassing charge. Under the charge is written: "while in a public place, did engage in otherwise disorderly conduct". The ticket was written and signed today by the douglas county district attorney's office. "

Engelking is being charged with violating Wisconsin statutes 943.15(1)- Entry into/onto Bldg/Construct.Site/Room (Misdemeanor) and 947.01 Disorderly Conduct (also a misdemeanor). Both are criminal offenses. To put it lightly, this guy is getting screwed.

Tags: [douglas county sherrifs department](#), [superior](#), [stupidity](#), [enbridge](#)

[Stupidity](#)

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**Dufferin Street looking south to Hwy 9. Glenville Creek is at the bottom of the hill. Glenville Creek is classed (by LSRCA) as a cold water stream feeding into Lake Simcoe. Residents have been asked (subsidized) to plant trees along the banks of this creek.**





**Pottageville creek looking south from the Aurora Sideroad.**





**Pottageville on the Aurora Sideroad at the 7th concession.  
This is a picture of the creek looking north from the Aurora Sideroad.**





**South of the Nature Reserve at the Ansnorveldt Wetlands,  
looking north towards the YEC.**





**Glenville Creek looking west from Dufferin.**





**Glenville Creek looking east from Dufferin.**





**The front of the property next to the YEC  
during the rainstorm in May 2009**





**The Cawthra Mulock Nature Reserve parking lot on Dufferin Street  
south of the YEC during a rain storm in May 2009**



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